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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,819

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Richard F Butterwick

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

09/10/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/540,819	Applicant(s) BUTTERWICK ET AL.	
	Examiner C. SAYALA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/16/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-9, 12, 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogilvie et al. (US Patent 5776913).

Col. 3, lines 13-20, disclose a “typical canned dog food product” which includes rice in amount 4-8 wt %, cellulose in an amount 0.5-2 wt% and beet pulp in an amount 0.5-2 wt%.

With regard to claim 8, by disclosing the foodstuff as a pet food, inherently the function/property of the foodstuff, of improving intestinal function has been met. The same applies to claim 9.

By administering the foodstuff, inherently diarrhea has been prevented. By mixing such ingredients into a canned pet food (Example 1), i.e. the source of rice starch, the cellulose and the beet pulp, claim 14 has been met.

2. Claims 1-9, 12, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheuk et al. (US Patent 6440485).

Cheuk et al. discloses a wet pet food product (col. 3, lines 5-7) which includes a mixture of beet pulp, rice and cellulose.

With regard to claim 8, by disclosing the foodstuff as a pet food, inherently the function/property of the foodstuff, of improving intestinal function has been met. The same applies to claim 9.

By administering the foodstuff, inherently diarrhea has been prevented. By mixing such ingredients into a canned pet food, i.e. the source of rice starch, the cellulose and the beet pulp, claim 14 has been met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogilvie et al. or Cheuk et al. in view of Shields, Jr. et al. (US Patent 6156355), Guilford (Journal of Nutrition, 124, pp. 2663S-2669S, 1994.) taken with Sunvold et al. (Journal of Animal Science, 73(4), pp. 1099-1109, 1995) and Wichert et al. (J. Nutr., vol. 132, pp. 1728S-1729S, 2002) and Fekete et al. (J. Anim. Physiol. a. Anim. Nutr. Vol. 88, pages 238-142, 2004).

The primary references are as described above. They do not expressly state that gastrointestinal health is improved. Shields, at col. 8, lines 1-2, indicates that rice supports superior digestibility. Page 2665S of Guilford teaches that high digestibility reduces the antigenicity of bowel content and results in complete absorption in the small intestine. At 2666S (col. 1), rice is noted as being highly digestible and does not induce allergies. "For these reasons, carbohydrates included in diets for the management of gastrointestinal diseases must be highly digestible.

An ideal carbohydrate source for dogs and cats with small bowel diarrhea is rice. White rice is highly digestible and does not induce gluten enteropathy. Furthermore, there are few reported allergies to rice proteins in dogs or cats. Boiled white rice is suitable for dogs and baby rice cereals for cats. The palatability of rice baby cereals to cats can be enhanced by cooking the cereal with chicken soup or broth."

Sunvold et al. teach at page 1108, col. 1, the following:

"Stool quality is important to the animal; diarrhea and constipation are undesirable conditions. Stool quality is important to the owner because it is often used as an indication of animal health. Thus, the influence of dietary fiber on stool quality is important. Optimal stool quality results when feces are of adequate firmness to prevent diarrhea but soft enough to prevent constipation. Two ways to measure stool quality are fecal DM percentage and stool consistency."

Page 1108, col. 2 indicates:

"Results of fiber fermentation as evaluated in vitro can be used to reasonably predict in vivo fiber utilization responses by dogs. Sources of fiber that are moderately

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fermentable, such as beet pulp, promote gastrointestinal tract health while maintaining excellent stool characteristics and nutrient digestibility.”

Wichert et al. teach that cellulose provides an above-average water-binding in feces, consequently improving feces quality. See page 1728S, col. 1. Fekete et al. teach that a diet containing cellulose results in moist, well-formed stools (see p. 141, 3rd full paragraph, last 3 sentences). Based on Sunvold et al. who teach that stool quality speaks of the animal’s health, cellulose improves gastrointestinal health.

Such disclosures indicate that fibers and rice improve gastrointestinal health and to reasonably expect the Ogilvie formula to do so as well would have been obvious to one of ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/

Primary Examiner, Art Unit 1794